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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 143

KEARNEY-TRECKER EMPLOYEES LOCAL 1083, UAW-CIO,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD AND KEARNEY & TRECKER CORPORATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Kearney-Trecker Employees Local 1083, U. A. W.-C. I. O., prays that a writ of certiorari issue to review the final judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on the 26th day of February, 1954, wherein the said Court of Appeals dismissed the petition of the National Labor Relations Board for enforcement of an order issued by said Board on the 31st day of December, 1952, in which, after finding the Kearney & Trecker Corporation had engaged in unfair labor practice, the Board ordered certain affirmative action.

OPINION BELOW.

The opinion of the Court of Appeals for the Seventh Circuit appears at page 2 of the certified copy of the Record, filed herewith. It is reported in 210 Fed. (2d) 852.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on the 26th day of February, 1954. On the 12th day of March, 1954, petition for rehearing was filed by the petitioner herein. Said petition for rehearing was denied on the 5th day of April, 1954.

The jurisdiction of this Court is invoked under sections 8 (1) and 10 (f), Labor Management Relations Act of 1947, as amended.

In its opinion filed the 26th day of February, 1954, the United States Court of Appeals for the Seventh Circuit held that the election held by the National Labor Relations Board for the purpose of determining the bargaining representative desired by the employees was held in an atmosphere that precluded a free choice by the employees of the representative they desired.

QUESTION PRESENTED.

Did the Circuit Court of Appeals, by basing its decree upon its own opinion on issues raised by an internal union controversy relating to title to property never litigated and pending in two actions in the Circuit Court of Milwaukee County in the State of Wisconsin, exceed its authority on review of the action of the National Labor Relations Board in a representation case by substituting its judgment for the judgment of the Board?

SPECIFICATION OF ERRORS TO BE URGED.

The United States Court of Appeals for the Seventh Circuit erred:

(1) In grounding its decision and order on its own opinion of wholly unlitigated issues in an internal union controversy which were pending in the state courts of Wisconsin.

(2) In holding that it was the duty of the National Labor Relations Board to hear and determine the issues involved in an internal union controversy.

(3) In holding that it was the duty of the National Labor Relations Board to determine title to the funds and other property of the employees union at the Kearney & Trecker Corporation plant.

(4) In holding that it was the duty of the National Labor Relations Board to determine the legality and the effect of a claimed disaffiliation from an international union and the affiliation with another international union.

(5) In holding that though the Board made no finding whatever upon the issues involved in the internal union controversy and upon the wholly unlitigated issues, that the court should substitute its judgment on the issues involved and base its decree upon such substitution.

(6) In resolving the wholly unlitigated issues of an internal union controversy to the extent of excluding the Board from any discretion whatever in the matter and entering a decree instead of remanding the case back to the Board for further action.

(7) In holding that the unlitigated issues of an internal union controversy were material to the sole issue before the Board in the representation proceedings.

REASONS FOR GRANTING WRIT.

(1) That the opinion and decree of the United States Court of Appeals for the Seventh Circuit is in conflict with the decisions of this Court in *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 226; *Southern Steamship Co.* v. *National Labor Relations Board et al.*, 316 U. S. 31, 37; *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 458; *Amalgamated Workers* v. *Edison Co.*, 309 U. S. 261, 264; and *National Labor Relations Board* v. *Tower Co.*, 329 U. S. 324, 333.

(2) That the decision and decree of the Court of Appeals for the Seventh Circuit is in conflict with the decision of the Court of Appeals, Fifth Circuit, *National Labor Relations Board* v. *Whittier Mills Co.*, 111 F. (2d) 474, 477; the Court of Appeals, Fourth Circuit, *National Labor Relations Board* v. *National Plastic Products Co.*, 175 F. (2d) 755, 759; the Court of Appeals, Sixth Circuit, *National Labor Relations Board* v. *H. S. Kress & Co.*, 194 F. (2d) 444, 446; and Court of Appeals, Second Circuit, *National Labor Relations Board* v. *Moyer & Pratt, Inc.*, 208 F. (2d) 624, 625.

(3) That the decision and decree of the Court of Appeals, Seventh Circuit, is in conflict with the long-established practice of the National Labor Relations Board. *Bowen Products Corp. and International Union U. A. W.-C. I. O.*, 89 N. L. R. B. 235; *Boston Machine Works Co. and Local 257, International Union*, 89 N. L. R. B. 61; and *Brightwater Paper Co. and United Mine Workers*, 54 N. L. R. B. 1106.

(4) The opinion and decree of the United States Court of Appeals for the Seventh Circuit which, in effect, holds that the National Labor Relations Board in a representation hearing must hear and determine issues including title to property involved in an internal union controversy, is

fraught with such potential mischief that it can reasonably cause the complete frustration of the policy of the Labor Management Act in the free choice of bargaining representatives.

(5) That if such ruling is permitted to stand, it would be almost impossible for the National Labor Relations Board to ever effectuate the policies of the Act as it relates to representation of employees in bargaining relations.

(6) That all that would be necessary to completely and fully render any action the Board might take futile would be for a small or large group of dissident members of a labor union to raise claims to title and custody to the property of a union.

(7) That the Board could not, if the ruling of the Court of Appeals for the Seventh Circuit remains unreversed, ever order any representation election unless and until it decided adverse claims of dissident groups in a union to the title and custody of the property of the union.

(8) That any decision made by the Board as to the title and custody of the property of the union would not be *res adjudicata* as to the adverse claims and could very well in a state court having entire jurisdiction of all the issues result in an entirely contrary judgment.

(9) To permit the decision and order of the Court of Appeals for the Seventh Circuit to stand, based on its assumed authority to determine how wholly unlitigated issues should be resolved, would cause utter confusion in countless representation proceedings.

(10) That if the decision and decree of the Court of Appeals for the Seventh Circuit is to stand as the law of the land, it will mean that all representation cases will be subject to review by the Court of Appeals as if they were tried in the first instance in that court, which would be tantamount to a trial *de novo*.

(11) That if the decision and decree of the Court of Appeals for the Seventh Circuit is to become the law of the land, all that would be necessary to completely frustrate any attempt of the employees of any employer as to their choice as to bargaining representative would be for a small group of dissident employees, or an international union, or an employer to raise issues, either real or fantastic, in any representation hearing and compel the Board to litigate and resolve such issues.

(12) That even if the Board did litigate and resolve such issues they could again be reviewed and litigated in the Court of Appeals.

(13) The decision and decree of the Court of Appeals for the Seventh District makes mandatory the determination of property rights to union's assets by the Board prior to the Board's conducting an election in a representation proceeding. Such precedent must result obviously in a conflict between the state and federal courts in respect to the determination of property rights to union's assets in the event of affiliation or disaffiliation.

(14) Added importance to the determination of this question by the Supreme Court stems from the fact that there are now before the Board certain cases involving the same issues. In these cases the local unions have seceded from the international unions and the question of the right and title to the property and assets is in issue. These cases involve such unions as the United Electrical Workers of America and the International Fur & Leather Workers of America. *Lawrence Leather Co.*, 108 N. L. R. B. No. 88; *International Harvester Co.*, 108 N. L. R. B. No. 91.

STATEMENT.

Very briefly the events leading up to the present situation are as follows:

In 1945 the National Labor Relations Board certified the Employees Independent Union, hereafter called the E. I. U., as representative of approximately 1500 employees of the Kearney & Trecker Corporation. At that time the E. I. U. was affiliated with the Confederated Unions of America, hereafter called the C. U. A.

At a regular meeting of the E. I. U. on September 10, 1950, the motion was made and carried that the E. I. U. disaffiliate from the C. U. A. Thereafter, the charter of the E. I. U. was returned to the C. U. A. with a notice of disaffiliation.

On November 5, 1950, at a regular meeting of the E. I. U. membership, it was voted to invite representatives of various international unions to speak at an open union meeting for the purpose of permitting the membership to determine whether they wish to affiliate with any of them. On December 17th such meeting was held and representatives of four international unions spoke.

At a meeting on January 7, 1951, a motion was made and carried to hold another special meeting for the purpose of hearing more fully from representatives of the UAW CIO and the UAW A. F. of L. and of deciding on affiliation. This meeting was held on January 21, 1951.

Following talks by representatives of the two international unions invited to the meeting, a secret ballot was taken to determine with which international union, if either, the E. I. U. should affiliate. Out of 99 persons present, 68 voted for the UAW CIO, 28 for the UAW A. F. of L. and 3 for the E. I. U.

Following the decision made at the January 21st meeting, the officers of E. I. U. applied for and received on March 4, 1951, the charter from the UAW CIO as Local 1083.

On March 20th notice was given to the Company that all deductions for union dues from wages should be delivered to the Treasurer of Local 1083.

On February 8, 1951, the Company refused to continue bargaining relations and to permit an international representative of UAW CIO to participate.

On March 9, 1951, the Company wrote the President of Local 1083 that it (the Company) was confronted with conflicting claims of the UAW CIO, the C. U. A. and members of the Independent Union, and that until a decision of the proper tribunal as to what the situation really was, they were not in a position to meet and bargain.

Certain members of the E. I. U., not interested in affiliation with the UAW CIO, asserted that all of the steps taken by the officers of the E. I. U. to affiliate with the UAW CIO were illegal and of no effect.

On the 4th day of April, 1951, your petitioner petitioned the National Labor Relations Board for a representative election based on the ground that there was an unresolved doubt as to who the employees of the Kearney & Trecker Corporation desired as their bargaining representative. That there was a schism among the employees of the Kearney & Trecker Corporation which had completely disrupted the bargaining relations between the employees and the employer.

That on the 8th day of May, 1951, the National Labor Relations Board held a hearing at Milwaukee, Wisconsin, to determine whether such election should be ordered. That all of the interested parties were present at said hearing. That after a full and complete hearing, upon

which testimony was adduced and all interested parties having stated their position, the Board on the 14th day of August, 1951, ordered an election to be held among the employees of the Kearney & Trecker Corporation to determine the bargaining agent desired by said employees.

In the hearing on Local 1083's petition for representation election, the Company contended that no election should be ordered because: (1) the existence of the unexpired contract of July 2, 1950, barred an election; and (2) "that it would be inequitable to hold an election while 1083 is still holding funds belonging to the E. I. U."

That on the 12th day of September, 1951, said election was held and your petitioner received the majority of votes cast in said election and was thereafter on the 31st day of October, 1951, certified by the National Labor Relations Board as the exclusive bargaining agent for the employees of the Kearney & Trecker Corporation. That the Kearney & Trecker Corporation refused to bargain collectively with your petitioner, the certified exclusive bargaining agent of its employees.

That on the 16th day of November, 1951, your petitioner complained to the National Labor Relations Board that the Kearney & Trecker Corporation was engaging in "unfair labor practice" by refusing to engage in collective bargaining negotiations with the certified exclusive bargaining representative.

That on the 4th day of December, 1951, the National Labor Relations Board issued a complaint charging the said Kearney & Trecker Corporation with engaging in unfair labor practices by refusing to bargain collectively with its certified bargaining representative.

On the 21st day of January, 1952, at Milwaukee, Wisconsin, a full and complete hearing on the complaint was held, at which all interested parties were present and took part in said proceeding. That your petitioner, the charg-

ing party, was duly permitted to intervene in said proceeding and took an active part therein.

That on the 31st day of December, 1952, the National Labor Relations Board issued its decision and order in said proceeding finding the Kearney & Trecker Corporation guilty of engaging in unfair labor practices by refusing to bargain with the certified exclusive bargaining agent of its employees and ordering said Kearney & Trecker Corporation to cease and desist from such practice and ordering it to take certain affirmative action.

Thereafter the Kearney & Trecker Corporation petitioned the United States Court of Appeals for the Seventh Circuit for a review of the decision and order of the National Labor Relations Board entered on the 31st day of December, 1952.

That on the 26th day of February, 1954, the United States Court of Appeals for the Seventh Circuit refused to enforce the Board's order and entered a decree dismissing the petition.

That on the 12th day of March, 1954, your petitioner, as the aggrieved party in the action, petitioned the United States Court of Appeals for the Seventh Circuit for a rehearing of its decision and order. That on the 5th day of April, 1954, the United States Court of Appeals for the Seventh Circuit denied the petition.

That the denial of the Court to enforce the order of the National Labor Relations Board entered on December 31, 1952, places the petitioner in exactly the same position as if the decision and order of the Board were adverse to the petitioner in the first instance; and it is thereby aggrieved in exactly the same manner as if the Board had originally dismissed the unfair labor charge complaint, thus bringing the petitioner under the provisions of Section 10 (f) of the Labor Management Act of 1947, as amended.

ARGUMENT

The petitioner was the charging party in the National Labor Relations Board case No. 13-CA-971, in which the order involved herein was issued; that with the permission of the Court of Appeals, Seventh Circuit, it filed a brief in the above entitled case, which was received by and noticed in its opinion by the Court; that it is the bargaining representative, certified by the National Labor Relations Board, for the production and maintenance employees of the Kearney & Trecker Corporation and is aggrieved by the decision of the U. S. Court of Appeals, Seventh Circuit, and its impact upon the Board's order of December 31, 1952.

The Real Parties in Interest.

We respectfully submit that the U. S. Court of Appeals, Seventh Circuit, in its decision completely ignores the real parties in interest.

The real parties in interest are *not* the Kearney & Trecker Corporation, nor Local 1083, nor the Employees Independent Union, nor the National Labor Relations Board, but are the *employees* of the Kearney & Trecker Corporation, whose absolute right to the benefits of collective bargaining have been denied for a period of over three years.

This right to collective bargaining is paramount to, and should not be denied, by differences between or claims of Local 1083, Kearney & Trecker Corporation or Employees Independent Union to the title of property.

The National Labor Relations Board clearly recognized that this right was paramount in its order for the election held on September 12, 1951.

This order was to effectuate the policies of the National Labor Relations Act of 1947, by restoring collective bargaining rights to the employees of the Kearney & Trecker Corporation.

The only issue involved in Case No. 13-RC-1900 was: Was there an unresolved doubt as to the identity of the bargaining representative desired by the employees of the Kearney & Trecker Corporation?

The Board found as a fact that there was such an unresolved doubt. There is not one bit of evidence anywhere in the record that even tends to refute that finding.

The positive evidence in the record supporting that finding is overwhelming.

The Employer, in its letter of March 9th, 1951 (Ex. 7) (Pet. Appx. 37) clearly states this doubt and that it was so serious that the bargaining negotiations were wholly suspended.

This was the situation that confronted the Board on May 8th, 1951, when the representation hearing opened (Case 13-RC-1900).

The paramount interests involved in that hearing were the rights of the employees of the Kearney & Trecker Corporation to the benefits of collective bargaining.

Not Local 1083; not the Employees Independent Union; not the Kearney & Trecker Corporation.

The absolute duty of the Board was to resolve that doubt and to take such action that would affectuate the policies of the National Labor Relations Act.

And that doubt could be resolved only by giving all the employees of the Kearney & Trecker Corporation the opportunity to express their choice as to whom *they* desired as *their* bargaining agent.

The election was ordered, held, and the choice of the employees clearly and definitely expressed and established.

We respectfully submit that the only matter before the Board at the representation hearing was the unresolved doubt that had thrown collective bargaining relations into confusion.

Whether there was one union or two unions seeking recognition as the bargaining representative was, and is, wholly immaterial to the real issue involved—that was the restoration of collective bargaining at the Kearney & Trecker plant.

After the Board had determined from the record that an election was necessary to resolve the doubt, it was the absolute duty of the Board to see that any person or any group of persons claiming recognition, and showing evidence of a sufficient interest, was placed upon the ballot to be voted on by all the employees.

Evidently the group of employees calling themselves Local 1083, and the group calling themselves Employees Independent Union, each in the opinion of the Board had shown sufficient interest to entitle them to a place on the ballot.

And this was indubitably true, whether there was one union or two unions.

Kearney & Trecker Employees Local 1083 made no attempt before the Board, at either hearing, to litigate the question of affiliation or disaffiliation, nor to litigate the question of control of the property of the union.

It was wholly immaterial to the real issue before the Board, *i.e.*, the confusion of the collective bargaining involving all the employees of the Kearney & Trecker Corporation.

This entire matter, involving the legality of the disaffiliation and affiliation, the right to control the property, the Commissary management and control, are all at issue,

and pending in the Circuit Court of Milwaukee County, State of Wisconsin.

These issues, which are purely internal union matters, will be determined by a court of equity, in a regular and orderly manner, and a decree entered, based on all the evidence material to the issues.

In its opinion and decision on the Board's petition for enforcement of its order, the U. S. Court of Appeals, Seventh Circuit, states, at page 8 of the printed copy:

> "* * * With that litigation we need not be concerned and certainly we do not intend to prejudge it * * *."

We respectfully submit that that is exactly what the Court has done.

We sincerely believe that the real problem is the protection of the right of *all the employees* to be able to bargain collectively for their working conditions. This right has been denied them for over three years.

It matters not who, or what, is responsible for this condition. This right of the employees is paramount to any other consideration.

The National Labor Relations Board, after full hearing and careful consideration, took what it, as an expert in the field, deemed the best way to effectuate the policies of the National Labor Relations Act.

And in taking such action it very properly and wisely, in its effort to protect the rights of all employees, left the internal union squabble to be resolved by the competent judicial tribunal that had already taken jurisdiction to do so.

Collective bargaining for conditions of employment would be restored to the employees of the Kearney & Trecker Corporation, and the policies of the National Labor Relations Act would be effectuated and all of the

present confusion would be removed if the Board's order was reinstated.

The Circuit Court of Milwaukee County will, after a complete trial, resolve the conflicting claims to the property of all of the parties.

In the meantime, the employees of the Kearney & Trecker Corporation should not be denied their absolute right to bargain collectively through representatives of their own choice.

Petitioner believes this to be a case wherein a writ of certiorari should be granted.

Respectfully submitted,

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